

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Verizon California, Inc. (U 1002 C), a Corporation, for Authority to Re-Categorize Inside Wire Maintenance Plans and Billable Repair Service from Category II to Category III Service Offerings.

Application 01-02-012
(Filed February 7, 2001)

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL
CONTRIBUTIONS TO DECISION 04-05-058**

I. Summary

We award The Utility Reform Network (TURN) \$51,957,¹ for its substantial contribution to Decision (D.) 04-05-058.

II. Background

Telecommunications services for companies operating under the New Regulatory Framework set forth in D.89-10-031 are classified according to three distinct categories: Category I represents services deemed to be basic monopoly services; Category II designates discretionary or partially competitive services in which the local exchange carriers (LEC) retain significant, though perhaps declining, market power; and Category III encompasses detariffed services because such services are fully competitive due to statutory

¹ Amounts are rounded to the nearest dollar.

requirements or federal preemption, or upon a LEC showing that it has, or is expected to have, insignificant market power.²

The rates and charges for Category I and II services can only be established or modified with Commission approval. The rates and charges for Category III services can be set at the highest level for flexibility in pricing allowed by law, provided that certain notice requirements are met.

Verizon sought authority to re-categorize its Inside Wire Maintenance Plans (IWMP) and Billable Repair Services (BRS) to Category III from Category II. Verizon also sought to increase its IWMP and BRS ceiling rates, and to separate its BRS tariff schedule from business and residential customers. Decision 04-05-058 granted Verizon's application.

III. Requirements for Award of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812 requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)

² 33 Cal PUC 2d 43 at 127 (1989).

2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(h), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

IV. Procedural Requirements

The first four requirements are procedural. The prehearing conference in this matter was held on April 30, 2001. TURN filed its NOI timely on May 14, 2001. In its NOI, TURN asserted financial hardship. On May 31, 2004, Administrative Law Judge (ALJ) Galvin issued a ruling that found TURN to be a customer under the Public Utilities Code and that TURN met the significant financial hardship condition. TURN filed its request for compensation on July 2, 2004, within the required 60 days of D.04-05-058 being issued. TURN has satisfied all the procedural requirements necessary to make its request for compensation.

V. Substantial Contribution to Resolution of Issues

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural

recommendations put forward by the customer? (*See* §1802(h).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§1802(h) and 1802.5.) As described in §1802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.³

Even where the Commission does not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution.⁴ With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

³ D.98-04-059, 79 CPUC2d, 628 at 653.

⁴ *See* D.03-12-019, discussing D.89-03-063 (31 CPUC2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

A. TURN's Argument on Substantial Contribution

TURN contends that the ALJ's proposed decision, the alternate decision, and the adopted decision reflect the impact of TURN's advocacy in its cross-examination of witnesses, direct testimony, and briefs, even though TURN was not successful in the final decision on its arguments to retain IWMP and BRS as Category II services.

TURN took the position that IWMP and BRS should not be re-categorized because of the difficulty of market entry,⁵ and the relative lack of supply elasticity⁶ and demand elasticity⁷ for these services. Regarding the surveys conducted and used by Verizon to support its contention that broad-based competition exists in the inside wire market, TURN asserted that the surveys were based on subjective interpretations and that they showed few competitors in remote regions. (Exhibit No. 19, pp. 4-13; TURN Opening Brief pp. 26-25; *see also* ORA Reply Brief, p. 11.) TURN took the position that reasonable alternatives to Verizon's repair services did not exist.

TURN alleges that its involvement was extensive in hearings and in the preparation of briefs. TURN also alleges that when its position did not prevail, it was nonetheless embraced by either the ALJ's proposed decision or alternate decision in three major areas (market entry, supply elasticity, and demand

⁵ Market entry is the extent of technical expertise and capital requirements needed to enter a market.

⁶ Supply elasticity is the willingness of alternative business suppliers to enter a market or to expand its service.

⁷ Demand elasticity demonstrates the customers' willingness to change suppliers for service within a market in response to a price change for the service.

elasticity). Although, TURN was not successful on the arguments it presented, the final decision does reflect the significant impacts of TURN's advocacy.

B. Discussion

In regard to market entry, TURN's examination of witnesses assisted us in understanding the results of Verizon's surveys. We found that the "surveys must be interpreted with care, particularly surveys concerning a competitive market. Only in monopoly markets can we have a comprehensive picture of everything that goes on." (D.04-05-058, *mimeo.*, p. 18.) We also recognized that businesses may need a service fleet to provide IWMP services, as stated by TURN (D.04-05-058, *mimeo.*, p. 17.) Finally, TURN's non-statistical study of alternative business suppliers providing or willing to provide repair of inside in a remote area demonstrated to us that alternative business suppliers, not necessarily located within a specific community, were willing to offer alternative BRS. (D.04-05-058 *mimeo.*, pp 19-20.)

TURN's argued that Verizon did not provide an analysis of supply flexibility. Although we did not adopt TURN's position, it required us to recognize that the lack of a supply flexibility analysis makes determination of supply elasticity difficult. (D.04-05-058, *mimeo.*, p. 21.) TURN also demonstrated that Verizon had not established that alternative suppliers do or would provide IWMP options to residential and landlord customers. (D.04-05-058, *mimeo.*, pp. 22-23.)

We rejected TURN's arguments that Verizon failed to establish the existence of demand elasticity. Those arguments convinced us, however, that customers may be unsure about competitive options for inside wire repairs and about the use of a Standard Network Interface (SNI) device. We therefore

required Verizon to provide additional inside wire education to its customers so that they can make informed choices.

Specifically, Ordering Paragraph 9 of D.04-05-058 requires Verizon to educate its customers that IWMP is an optional service, that customers may use outside vendors to perform inside wire repair maintenance or may make repairs themselves, and that under state law, landlords are responsible for the repair to and maintenance of inside telephone wire. Also, Ordering Paragraphs 9 and 10 of D.04-05-058 require Verizon to annually notify its customers how to test for dial tone at the Standard Network Interface (SNI) device. Finally, the decision bars Verizon from charging customers for a premise visit when an SNI has not been installed at the customer premise. (D.04-05-058, *mimeo.*, p. 47.)

We find that TURN's analysis and participation in this proceeding substantially contributed to D.04-05-058.

VI. Reasonableness of Requested Compensation

TURN requests \$55,590⁸ for its participation in this proceeding.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation.

⁸ This amount is \$60 less than the \$55,650 amount identified in TURN's filed compensation request. The problem is a clerical error of TURN's. Rather than formally amending its compensation request TURN sent a August 2, 2004 electronic message that Nusbaum's \$350 hourly rate stated in its compensation request should be reduced to \$340 an hour. This overstated hourly rate resulted in TURN overstating its total request by \$60 (\$10 hourly rate error x 6 requested hours = \$60).

Although TURN attempted to determine the numeric impact of its showing in this proceeding, it was not able to do so because of the difficulty of quantifying the dollar impact from Verizon providing SNI and inside wire repair education to its customers or the monetary benefits that will accrue to customers from making informed inside wire repair decisions.

We find that the overall economic interests in educating customers on SNI and inside wire repairs are so considerable that we are justified in accepting as adequate TURN's qualitative showing of productivity. We therefore find that the costs of TURN's participation are reasonable in relation to the benefits ratepayers will realize through that participation.

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

TURN documented its claimed hours by presenting a daily breakdown of the hours its attorneys and advocates devoted to the proceeding, accompanied by a brief description of each activity. These activities consisted of general participation, preparation and participation at the hearing, preparation and presentation of a survey of potential providers of inside wire service, and preparation of briefs of which time is split equally among market entry, demand elasticity, and supply elasticity. The time TURN spent on its compensation request is identified separately.

TURN believes that the total number of hours claimed is reasonable given the scope of this proceeding. With one exception, we concur with TURN on the

hours it seeks compensation for. This exception is the time TURN's attorney Nusbaum spent on this proceeding.

TURN's detailed summary of time and activity undertaken by Nusbaum show that Nusbaum's activities were classified as general participation and limited to review work. As set forth in Appendix A of TURN's compensation request, Nusbaum spent three hours on November 20, 2003 reviewing the record of this proceeding, in which we received 24 exhibits over three days of evidentiary hearings two years earlier in 2001. On March 3, 2004, he spent an hour reviewing the forty-plus page alternate decision, on March 8, 2004 an additional hour reviewing the joint comments of the Office of Ratepayer Advocates (ORA) and TURN on the alternate decision, and on March 10, 2004 he spent an hour reviewing Verizon comments on the alternate decision and review/comment on a joint ORA/TURN reply to Verizon's comments. However, TURN does not explain how Nusbaum's review work resulted in a substantial contribution to the proceeding.

TURN has not substantiated that the six hours of time Nusbaum spent reviewing matters in this proceeding were effective or efficient for TURN's participation. TURN should not be compensated for the time Nusbaum spent in this proceeding, and the amount we award reflects an appropriate reduction from TURN's request.

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons.

TURN seeks an hourly rate of \$190 for work performed by Anthony in 2001; \$180 for work performed by Costa in 2001; and \$310 for Finkelstein in 2001, \$365 for his work in 2003, and half the 2003 rate in 2004 for his work on the compensation request. The Commission has previously approved these rate for

work performed by Anthony in 2001; by Costa in 2001; and by Finkelstein in 2001, 2003 and 2004.⁹ We find these rates reasonable.

This is the first proceeding that TURN is requesting an hourly rate for substantive work performed by Nusbaum.¹⁰ Because we have rejected all of the hours TURN has requested for Nusbaum the setting of a reasonable hourly rate for substantive work in 2003 and 2004 is moot.

TURN seeks a \$150 hourly rate for the 21.25 hours Barmore spent preparing its compensation request in 2004. This is an increase of \$10 from the \$140 hourly rate last set for Barmore in 1990.¹¹ At that time Barmore worked for TURN as a practicing attorney. In 2001 Barmore discontinued practicing law. TURN is requesting the \$10 hourly rate increase for Barmore for his preparation of its compensation request because such preparation does not typically require the work of an attorney and because his last authorized rate was set approximately 14 years ago. Contrary to the Commission's practice of awarding compensation at only half the requested rate for compensation-related hours, TURN seeks the full \$150 hourly rate because it states it requests a lower rate than it would otherwise be entitled to request because Barmore only performed compensation-related work.

Although Barmore is no longer a practicing attorney he has the qualifications, and experience, and has participated in Commission proceedings

⁹ See D.02-04-013 *mimeo.* at p.9 and 10, D.02-06-070 *mimeo.* at p.21, and D.03-04-041.

¹⁰ In the compensation request for D.02-09-050 and D.02-12-081 (Local Competition, in R.95-04-043 *et al.*, TURN proposed an hourly rate of \$250 for Nusbaum's work, since it was limited to preparation of the request for compensation in that proceeding.

¹¹ See D.90-12-026 at *mimeo.* p. 17.

as such and would clearly command a rate of \$150/hour. We will approve the requested rate of \$150 for Barmore but we consider independently whether his compensation-related work should be compensated at that full rate.

In D.04-04-012, we confirmed our policy to award lower paid staff (like law clerks) their full hourly rate. The same decision awarded half the hourly rate to an attorney who worked on the compensation request that was compensated at \$150 per hour. Consistent with that decision, we reduce the rate at which we compensate Barmore by half, especially in light of the number of hours spent on the compensation request. TURN is free to propose a different hourly rate for Barmore in future claims.

TURN seeks recovery of its office costs incurred as a result of its participation in this proceeding. These costs totaling \$815 consisted of reproduction (copy) cost, postage, and LEXIS research. These costs represent less than 1.5% of its total compensation request. TURN has adequately substantiated its office costs and should be compensated for the full \$815.

VII. Award

As set forth in the table below, we award TURN \$51,957 for its substantial contribution in this proceeding.

ITEM	YEAR	HOURS	RATE	TOTAL AMOUNT
Attorney Anthony	2001	162.00	\$190.00	\$30,780.00
Advocate Barmore	2004	21.25	75.00	1,593.75
Advocate Costa	2001	64.75	180.00	11,655.00
Attorney Finkelstein	2001	20.00	310.00	6,200.00
	2003	1.00	365.00	365.00
	2004	3.00	182.50	548.00
Office Costs				

Copies				766.00
Postage				17.00
LEXIS				32.00
Research				
TOTAL				\$51,957.00

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after TURN filed its compensation request and continuing until full payment of the award is made. The award is to be paid by Verizon as the regulated entity in this proceeding.

We remind TURN that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

VIII. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

IX. Assignment of Proceeding

Carl Wood is the Assigned Commissioner. Michael J. Galvin is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN represents consumers, customers, or subscribers of Verizon, which is regulated by the Commission.

2. TURN filed its NOI to claim compensation on May 14, 2001, and its request for compensation on July 2, 2004.

3. The individual economic interests of TURN are small in comparison to the costs incurred in effectively participating in this proceeding.

4. TURN made a substantial contribution to D.04-05-058.

5. TURN requested hourly rates for attorneys and experts are reasonable when compared to the market rates for persons with similar training and experience. TURN's requested costs of participation are reasonable.

6. The total of these reasonable fees and costs is \$51,957.00.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees and expenses, as adjusted herein, incurred in making substantial contributions to D.04-05-058.

2. So that TURN's award may be paid promptly, today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$51,957.00 as compensation for its substantial contributions to Decision 04-05-058.

2. Within 30 days of the effective date of this decision, Verizon shall pay TURN the total award.

3. Verizon shall also pay interest on the award beginning September 15, 2004, at the rate earned on prime, three-month commercial paper as reported in

Federal Reserve Statistical Release H.15, and continuing until full payment is made.

4. The comment period for today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decision(s):	D0405058
Proceeding(s):	A0102012
Author:	ALJ Galvin
Payer(s):	Verizon California, Inc.

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	7/4/2004	\$55,590	\$51,957	No	Failure to discount intervenor compensation time; unproductive efforts

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Anthony	Attorney	The Utility Reform Network	\$190	2001	\$190
Bob	Finkelstein	Attorney	The Utility Reform Network	\$310 \$365	2001 2003/2004	\$310 \$365
Mark	Barmore	Analysis	The Utility Reform Network	\$150	2004	\$150
Regina	Costa	Policy Expert	The Utility Reform Network	\$180	2001	\$180